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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 15th February, 2023

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W.P.(C) 1926/2023

FANS A.S.

..... Petitioner

Through: Mr. Anish Roy, Mr. Chandrakant
Tiwari & Ms. Aditi Kapoor Advs. (N:
9582241162.)

versus

MEJA URJA NIGAM PRIVATE LIMITED

..... Respondent

Through: Mr. Puneet Taneja Adv. and Ms.
Laxmi Kumari Advs. (M:
9711091860)**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

CM APPL.7347/2023 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

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3. The Petitioner – Fans A.S., is a company incorporated under the laws of the Czech Republic and has its office in Noida, Uttar Pradesh. The Petitioner has filed the present petition against the Respondent - Meja Urja Nigam Private Limited, which is a wholly owned subsidiary of NTPC seeking directions to the Respondent to initiate adjudication proceedings immediately upon completion of the mutual consultation proceeding.

4. The Petitioner was awarded projects for supply and erection of certain cooling towers. The said contracts were governed by the General Conditions of Contract (GCC).

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5. The case of the Petitioner is that it had also raised various claims with the Respondent. On 10th February, 2022, the Petitioner sent a letter to the Respondent seeking initiation of mutual consultation between the parties as per the GCC. However, the same was not initiated and a second letter dated 22nd February, 2022 for the same was sent by the Petitioner to the Respondent. Thereafter, on 25th March, 2022 and 27th May, 2022 the mutual consultation meetings were held between the parties. On 31st October, 2022 the Petitioner was issued a certificate from the Respondent with respect to approval for MEJA IDCT 2A evaluation test. The same is as under:

“Sub: Approval fro Meja IDCT 2A evaluation test.

Meja IDCT 2A PG test evaluation is attached as Annex-1. No shortfall was observed & Tower meets the Guarantee. ”

6. Despite the said certificate being issued, the disputes between the parties were not resolved. The Petitioner sent a letter dated 7th November, 2022 seeking release of certain payments. On the said date the Petitioner after waiting for a considerable period also sent an email requesting the acceptance of claim of the Petitioner in terms of the second mutual consultation meeting dated 27th May 2022 or to appoint an adjudicator by 11th November 2022. However, the acceptance of claim or appointment of the adjudicator as per the GCC did not take place. In view of the same, the Petitioner has filed this writ petition seeking directions to the Respondents to comply with the clause 6 of the GCC.

7. The submission of Id. Counsel for the Petitioner is that the Respondent is refusing to enter into mutual consultation proceedings and is

not appointing an adjudicator within the timelines prescribed in clause 6 of the GCC.

8. On behalf of the Respondent, Mr. Taneja, Id. Counsel submits that according to the Respondent, certain works are still outstanding, hence, while the Respondent has no objection in starting the consultation proceedings it had to hold back due to pendency of the said works.

9. Clause 6 stipulates the mechanism for settlement of disputes as per which, specific timelines have been prescribed for resolution of disputes. The relevant part of the same is as under:

“6.1 Adjudicator

6.1.1 If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities-whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract-the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute shall be referred in writing by either party to the Adjudicator, with a copy to the other party.

6.1.2 The Adjudicator shall give its decision in writing to both parties within twenty-eight (28) days of a dispute being referred to it. If the Adjudicator has done so, and no notice of intention to commence arbitration has been given by either the Employer or the Contractor within fifty-six (56) days of such reference, the decision shall become final and binding upon the Employer and the Contractor. Any decision that has

become final and binding shall be implemented by the parties forthwith.

6.1.3 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not fulfilling its functions in accordance with the provisions of the Contract, another retired Judge of High Court/Supreme Court of India shall be jointly appointed by the Employer and the Contractor as adjudicator under the Contract. Failing agreement between the two within twenty eight (28) days, the new retired judge of High Court/Supreme Court of India shall be appointed as the Adjudicator under the Contract at the request of either party by the Appointing Authority specified in the SCC. The adjudicator shall be paid fee plus reasonable expenditure incurred in the execution of its duties as adjudicator under the contract. This cost shall be divided equally between the Employer and the Contractor.”

10. It is clear from clause 6.1.1, that mutual consultation has to be explored. If the same does not fructify, an adjudicator has to be appointed, who shall give a decision within 28 days. These clauses are meant to ensure that disputes between the parties are resolved in an expeditious manner in projects involving huge sums of money, as delays in the same could result in disruption of businesses. The Petitioner has admittedly written emails to the Respondent and an adjudicator is yet to be appointed.

11. Under these circumstances, this Court is of the opinion that in terms of clause 6 of the GCC an adjudicator deserves to be appointed in the present case.

12. Considering the nature of the matter, Justice G.S. Sistani (Retd.) is appointed as the Id. adjudicator in this matter. The parties to appear before

the ld. adjudicator on 1st March, 2023 at 4:00 pm. A lumpsum amount of Rs. 5 lakhs is fixed as fees of the ld. adjudicator, which shall be payable equally between both parties. The ld. Adjudicator shall attempt to resolve the disputes between the parties in an expeditious manner.

13. The petition, along with all pending applications is disposed of in these terms.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 15, 2023
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